



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/15/02	Bill No:	AB 2014
Tax:	Sales and Use	Author:	Harman
Board Position:		Related Bills:	

BILL SUMMARY

This bill would require the Board to distribute to the operator of a swap meet, flea market, or special event an explanation of the sales tax law and a statement of the penalties for violating that law. This bill would also require the Board to report to the Legislature annually regarding audits of sellers at swap meets, flea markets and special events.

ANALYSIS

Current Law

Every person desiring to engage in business in this state as a seller of tangible personal property shall apply for a seller's permit with the Board. Due to the unique nature of swap meets, flea markets, and other special events, Section 6073 of the Revenue and Taxation Code provides that the Board may require the operator of a swap meet, flea market, or special event to obtain written evidence that the seller holds a valid seller's permit. A person making sales at a swap meet, flea market, or special event may obtain a temporary seller's permit if that person does not hold a regular seller's permit. There is no fee to obtain a permit.

Proposed Law

This bill would add Section 6073.3 to the Sales and Use Tax Law to require the Board to distribute to the operator of swap meet, flea market, or special event a one-page explanation of the sales tax law that includes, but is not limited to, a description of a seller's obligation and a separate statement in bold face type explaining the penalties for violating the sales tax law. This bill would also require the operator of the swap meet, flea market, or special event to distribute the sales tax law explanation and the statement of penalties described above to each seller upon registering the seller to conduct business at a swap meet, flea market, or special event.

This bill would also require, commencing September 30, 2003, the Board to report to the Legislature annually, on or before September 30, regarding audits of sellers at swap meets, flea markets, and special events. The report would include, but not be limited to, the sales reporting efforts of sellers with seller's permits. In the first report, the Board would report on the potential use of more effective means of recording sales by sellers with seller's permits and the potential cost for sellers of a system for recording sales.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position

Background

Recognizing that sellers at swap meets and flea markets may attempt to evade sales tax by operating without a seller's permit, the Legislature passed a law in 1973 that requires the operator of the swap meet or flea market to obtain written evidence that the seller is the holder of a valid seller's permit. If the event operator fails or refuses to obtain the necessary information from the seller, the event operator is subject to a penalty not to exceed \$1,000.

To ensure compliance with this provision, the Board will typically have staff work with an event operator to ensure that the necessary information is obtained and also to verify that the permit information gathered by the event operator is valid. It is not unusual for the staff person to visit the swap meet or flea market to verify that all persons selling at the event have the proper permit.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author in an effort to increase tax reporting compliance by persons who are selling at swap meets, flea markets, and special events.
2. **Penalty for failure to comply recommended.** This bill would require the Board to distribute to the operator of a swap meet, flea market or special event an explanation of the sales tax law and penalties. This bill would also require the operator of the swap meet, flea market or special event to distribute the explanation provided by the Board to each seller upon registering the seller to conduct business at the event. However, if the operator fails to distribute the information as required by this bill, there are no penalty provisions that may apply. In order to enhance compliance with the proposed provisions, it is recommended that a penalty be imposed similar to the penalty that applies to event operators for failure to obtain written evidence that the seller is the holder of a valid permit.
3. **Report to the Legislature required.** This bill would require the Board to prepare a report annually regarding audits of sellers at swap meets, flea markets, and special events. In the first report to the Legislature, the Board would be required to report on potential use of more effective means of recording sales by sellers with seller's permits and the potential cost for sellers of a system for recording sales.

Board audit staff will typically only conduct audits of a small percentage of seller's permit holders. This may include permit holders who make sales at swap meets, flea markets, and special events. Since it is likely that the number of audits conducted annually of persons who sell at swap meets, flea markets, and special events is somewhat limited, the report to the Legislature required by this bill may be of limited usefulness.

The law currently requires that a seller maintain adequate books and records. If a seller at a swap meet is selected for audit, the Board uses various audit techniques to verify that reported sales are materially accurate. Techniques such as examining bank statements, federal tax returns, cost of goods sold, and other business expenses are usually very good indicators of whether reported sales are accurate.

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Experienced Board audit staff is very good at adapting to various accounting systems used by sellers to record sales. Methods used by sellers can consist of a notebook with manual entries for each transaction, a cash register with a tape recording transactions, a shoe-box filled with various pieces of paper, and a very complex computer based double-entry accounting system. This bill may put the Board in the position of recommending specific accounting methods to be employed by various sellers. Typically, the biggest compliance problem with swap meet sellers is not recording sales, but simply getting the seller to obtain the necessary seller's permit.

COST ESTIMATE

Some costs would be incurred in preparing and distributing the forms required by this bill. These costs are expected to be absorbable.

REVENUE ESTIMATE

The provisions of this bill are not expected to impact state or local revenues.

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